

STATE OF MICHIGAN  
COURT OF APPEALS

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JOSEPH GADDIS, by his Next Friend and  
Guardian, ERMA GADDIS,

Plaintiff-Appellant,

v

REDFORD TOWNSHIP and CITY OF  
DEARBORN HEIGHTS,

Defendants,

and

MATTHEW BAIN, JOHN BURDICK and  
RICHARD DUFFANY,

Defendants-Appellees.

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Before: Hoekstra, P.J., and Sawyer and Gage, JJ.

PER CURIAM.

Plaintiff was shot several times during an encounter with police officers from both Redford Township and Dearborn Heights. After he was acquitted of criminal charges arising from the incident, he commenced this action against the municipalities and officers involved, alleging assault and battery, false arrest, false imprisonment, malicious prosecution, and gross negligence. The trial court granted summary disposition for the defendant officers on the ground that plaintiff's claims were barred by collateral estoppel.<sup>1</sup> The trial court held that the same issues had already been decided in a separate federal action arising out of the same incident. Plaintiff appeals as of right. We affirm.

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<sup>1</sup> Defendants Redford Township and Dearborn Heights were previously dismissed with prejudice.

This Court reviews a trial court's decision on summary disposition de novo. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). The trial court appears to have granted summary disposition under MCR 2.116(C)(7) and (8).

Under MCR 2.116(C)(7), summary disposition is available when an action is barred due to the disposition of the claim before commencement of the action, such as collateral estoppel. *Alcona Co v Wolverine Environmental Production, Inc*, 233 Mich App 238, 246; 590 NW2d 586 (1998). The standard for reviewing a motion under MCR 2.116(C)(7) is as follows:

A defendant who files a motion for summary disposition under MCR 2.116(C)(7) may (but is not required to) file supportive material such as affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3); *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). If such documentation is submitted, the court must consider it. MCR 2.116(G)(5). If no such documentation is submitted, the court must review the plaintiff's complaint, accepting its well-pleaded allegations as true and construing them in a light most favorable to the plaintiff. [*Turner v Mercy Hospitals & Health Services of Detroit*, 210 Mich App 345, 348; 533 NW2d 365 (1995).]

A motion under MCR 2.116(C)(8) tests the legal sufficiency of the plaintiff's complaint. The motion should be granted only if the claims are so clearly unenforceable as a matter of law that no factual development could justify recovery. The sufficiency of the claim is tested by the pleadings alone. *Patterson v Kleiman*, 447 Mich 429, 432; 526 NW2d 879 (1994). All well-pleaded factual allegations in the complaint are taken as true, as well as any reasonable inferences or conclusions that can be drawn from the allegations. *Peters v Dep't of Corrections*, 215 Mich App 485, 486; 546 NW2d 668 (1996).

Collateral estoppel precludes relitigation of an issue in a subsequent, different case between the same parties if the prior action resulted in a valid final judgment and the issue was actually and necessarily determined in the prior matter. *Horn v Dep't of Corrections*, 216 Mich App 58, 62; 548 NW2d 660 (1996). The ultimate issue in the second case must be the same as that in the first proceeding. *Detroit v Qualls*, 434 Mich 340, 357; 454 NW2d 374 (1990). The doctrine requires that the same parties must have had a full opportunity to litigate the issue in the prior proceeding, and there must be mutuality of estoppel. *Nummer v Dep't of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995).

To be necessarily determined in the first action, the issue must have been essential to the resulting judgment; a finding upon which the judgment did not depend cannot support collateral estoppel. [*Bd of Co Rd Comm'rs for the Co of Eaton v Schultz*, 205 Mich App 371, 377; 521 NW2d 847 (1994).]

Collateral estoppel will apply only if the basis of the former judgment can be "clearly, definitely, and unequivocally ascertained." *Ditmore v Michalik*, 244 Mich App 569, 578; 625 NW2d 462 (2001). "Crossover estoppel, which involves the preclusion of an issue in a civil proceeding after a criminal proceeding and vice versa, is permissible." *Barrow v Pritchard*, 235 Mich App 478, 481; 597 NW2d 853 (1999).

It is undisputed that the parties involved in this case are the same parties who were involved in the separate federal action.

Regarding the requirement that the parties must have had an opportunity to litigate the issues in the prior proceeding, collateral estoppel does not require that the prior judgment result from a trial, but only that the parties must have had a full opportunity to litigate the issue. *Nummer, supra*. The question here is whether plaintiff established a genuine issue of material fact to support his claims against defendants. In the federal action, the federal court held that plaintiff failed to demonstrate that there were any genuine issues of material fact. Therefore, the federal district court granted defendants summary judgment with respect to plaintiff's claims under 42 USC 1983. *Gaddis v Redford Twp*, 188 F Supp 2d 762 (ED Mich, 2002). For purposes of this case, the prior judgment in the federal action is an adjudication on the merits. Moreover, plaintiff had a full opportunity to demonstrate that there were genuine issues of material fact in that case by submitting evidence in support of his claims. See *Minicuci v Scientific Data Management, Inc*, 243 Mich App 28, 35-36; 620 NW2d 657 (2000) (an administrative referee's order dismissing the plaintiff's claim with prejudice represents an adjudication on the merits for purposes of claim preclusion). Although plaintiff argued below that the federal court did not have the benefit of the affidavits of plaintiff's experts, plaintiff had every opportunity to present that evidence in the federal action. The fact that the federal court did not have that evidence before it when granting summary judgment does not establish that plaintiff did not have a full and fair opportunity to litigate this matter in the federal court.

Plaintiff argues that because he was acquitted of all criminal charges, that ruling should be given collateral estoppel effect in this case. But the decision to acquit plaintiff of criminal charges was based upon a higher standard of proof, i.e., proof beyond a reasonable doubt. The criminal judge concluded that the evidence did not meet that standard. Moreover, this case focuses on defendants' actions and whether they had probable cause to believe that plaintiff was engaged in criminal activity or posed a threat to their safety. The two cases do not involve identical issues.

Plaintiff further argues that because the federal court declined jurisdiction over plaintiff's state-law claims, the federal court's rulings should not operate to bar plaintiff's claims in this case. We disagree. Although the federal court refused to rule on the state-law claims, the federal claims involved identical issues to those presented in this case. Because collateral estoppel concerns issue preclusion, and not claim preclusion, the federal court's decision properly may be given deference under collateral estoppel.

Furthermore, the decision to bind plaintiff over for trial in the criminal case was also given preclusive effect by both the federal court and the trial court here on the question of probable cause to arrest plaintiff. Contrary to plaintiff's argument, the bindover decision is a final decision for purposes of collateral estoppel, even though it was not a final judgment in the criminal case. Plaintiff had ample opportunity at his preliminary examination to challenge whether there was probable cause to charge him. Once again, the focus of this case is not on plaintiff's ultimate criminal liability for his actions, but whether defendants had probable cause to believe that he committed an offense.

Plaintiff had a full and fair opportunity to challenge the question of probable cause at his preliminary examination. He was only barred from pursuing matters that were not relevant to the "probable cause" question.

The only question remaining is whether the federal court resolved the same issues that plaintiff has raised in this case. We conclude that it did.

The elements of assault and battery are described in *Smith v Stolberg*, 231 Mich App 256, 260; 586 NW2d 103 (1998):

An assault is "any intentional unlawful offer of corporal injury to another person by force, or force unlawfully directed toward the person of another, under circumstances which create a well-founded apprehension of imminent contact, coupled with the apparent present ability to accomplish the contact." *Espinoza v Thomas*, 189 Mich App 110, 119; 472 NW2d 16 (1991). This Court defined battery as "the wilful and harmful or offensive touching of another person which results from an act intended to cause such contact." *Id.*

An officer may use such force as is reasonably necessary to effect a lawful arrest. *Young v Barker*, 158 Mich App 709, 723; 405 NW2d 395 (1987). "[T]he measure of necessary force is that which an ordinarily prudent and intelligent person, with the knowledge and in the situation of the arresting officer, would have deemed necessary." *Brewer v Perrin*, 132 Mich App 520, 528; 349 NW2d 198 (1984), quoting *Barrett v United States*, 62 US App DC 25, 26; 64 F2d 148, 149 (1933). While an officer may use reasonable force to effect an arrest, it is not relevant if the officer could have used a less painful or injurious method to effect the arrest. *People v Hanna*, 223 Mich App 466, 474; 567 NW2d 12 (1997).

Where an officer uses excessive force, he may be held liable for assault and battery even where the arrest is valid. *White v City of Vassar*, 157 Mich App 282, 293; 403 NW2d 124 (1987). When an individual is unlawfully arrested, he may use reasonable force to resist the arrest. *People v Eisenberg*, 72 Mich App 106, 111; 249 NW2d 313 (1976). See also *Anders v Clover*, 198 Mich 763, 766; 165 NW 640 (1917) (an individual who is assaulted may use reasonable force to protect himself).

The federal court concluded that the undisputed facts showed that defendants had probable cause to believe that plaintiff was attempting to assault them with an intent to kill when they shot plaintiff in response. *Gaddis, supra* at 770. The federal court further concluded that defendants did not use excessive force when they shot plaintiff. *Id.* Because the federal court decided that the undisputed facts showed both a lawful arrest and the lack of excessive force, plaintiff is collaterally estopped from relitigating these issues and, therefore, cannot establish a claim for either assault or battery in this case.<sup>2</sup>

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<sup>2</sup> While we are not required to review the merits of the federal court's findings, at plaintiff's specific request, we have reviewed the videotape of the incident. After review, we concur with  
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Causes of action for false arrest and false imprisonment were recently analyzed by this Court in *Peterson Novelties, Inc v City of Berkley*, 259 Mich App 1, 17-18; \_\_\_ NW2d \_\_\_ (2003):

False imprisonment has been defined by this Court as an unlawful restraint on a person's liberty or freedom of movement. *Clarke v Kmart Corp*, 197 Mich App 541, 546; 495 NW2d 820 (1992). A false arrest is an illegal or unjustified arrest, and the guilt or innocence of the person arrested is irrelevant. *Lewis [v Farmer Jack Div, Inc]*, 415 Mich 212, 218; 327 NW2d 893 (1982)]. To prevail on a claim of false arrest or false imprisonment, a plaintiff must show that the arrest was not legal, i.e., the arrest was not based on probable cause. *Id.*; *Burns v Olde Discount Corp*, 212 Mich App 576, 581; 538 NW2d 686 (1995); *Tope v Howe*, 179 Mich App 91, 105; 445 NW2d 452 (1989). If the arrest was legal, there has not been a false arrest or a false imprisonment. *Tope, supra* at 105. Whether the plaintiff could actually have been convicted is irrelevant because actual innocence is not an element of false arrest. *Lewis, supra* at 218 n 1; *Brewer v Perrin*, 132 Mich App 520, 527; 349 NW2d 198 (1984).

In *Peterson Novelties, supra* at 19, this Court also summarized what constitutes probable cause:

Probable cause that a particular person has committed a crime " 'is established by a reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious person in the belief that the accused is guilty of the offense charged.' " *People v Coutu (On Remand)*, 235 Mich App 695, 708; 599 NW2d 556 (1999), quoting *People v Tower*, 215 Mich App 318, 320; 544 NW2d 752 (1996). Probable cause is not capable of being precisely defined; rather, it is a commonsense concept dealing with practical considerations of everyday life that must be viewed from the perspective of reasonable and prudent persons, not legal technicians. *Ornelas v United States*, 517 US 690, 695-696; 116 S Ct 1657; 134 L Ed 2d 911 (1996).

The federal court held that the undisputed evidence showed that defendant Bain's initial stop of plaintiff was proper because he had a reasonable suspicion that plaintiff was driving while intoxicated. *Gaddis, supra* at 767-769. In addition, the federal court held that defendants had probable cause to arrest plaintiff because there was no question of material fact that he had a knife, which he used to stab defendant Burdick, thereby providing defendants with probable cause to believe that plaintiff committed an assault. *Id.* at 769-770. Because the federal court has already resolved that there was both a reasonable suspicion to stop plaintiff and probable cause to arrest him, plaintiff is now barred from claiming that defendants either falsely arrested or falsely imprisoned him.

In *Peterson Novelties, supra* at 21, this Court also explained the elements for a claim of malicious prosecution:

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the federal court's findings in all respects.

In the state malicious prosecution action, plaintiffs had the difficult burden of proving four elements: "(1) that the defendant has initiated a criminal prosecution against him, (2) that the criminal proceedings terminated in his favor, (3) that the private person who instituted or maintained the prosecution lacked probable cause for his actions, and (4) that the action was undertaken with malice or a purpose in instituting the criminal claim other than bringing the offender to justice." [Quoting *Matthews v Blue Cross and Blue Shield of Michigan*, 456 Mich 365, 378; 572 NW2d 603 (1998).]

"[T]he plaintiff's burden in a malicious prosecution case is to make a prima facie showing that the defendant's agents lacked probable cause to believe that the plaintiff had committed a crime." *Matthews, supra* at 379. Malice, for purposes of proving malicious prosecution, may be inferred from a lack of probable cause. *Flores v Dalman*, 199 Mich App 396, 405; 502 NW2d 725 (1993).

In the criminal case, plaintiff was charged with assault with intent to commit murder (for striking defendant Burdick with a knife) and fleeing and eluding. Because he was acquitted of those charges, he established that element of a malicious prosecution claim.

Nonetheless, the federal court held that there was no genuine issue of material fact that defendants had probable cause to believe that plaintiff was trying to assault them with an intent to kill when defendants shot him. *Gaddis, supra* at 770. Moreover, the federal court noted that the state district court had found that there was probable cause to bind plaintiff over for trial on the criminal charges. *Id.* Because the prior proceedings established that there was probable cause to support the criminal charges against plaintiff, plaintiff could not prove malicious prosecution in this matter.

The trial court also appeared to dismiss plaintiff's gross negligence claim under MCR 2.116(C)(8), for failure to state a claim upon which relief could be granted. We agree with the trial court that plaintiff merely restated the above intentional tort claims in support of his theory that defendants were grossly negligent. But plaintiff did not allege how defendants' conduct independently constituted gross negligence. MCL 691.1407(2)(c). Because plaintiff failed to allege sufficient factual allegations of gross negligence in his complaint, the trial court properly dismissed that claim under MCR 2.116(C)(8).

Affirmed.

/s/ Joel P. Hoekstra  
/s/ David H. Sawyer  
/s/ Hilda R. Gage